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Attorneys for Defendant

**IN THE U.S. DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

KEVIN DUECKER,

Plaintiff,

vs.

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY,**

Defendant.

Cause No. CV-12-56-RFC

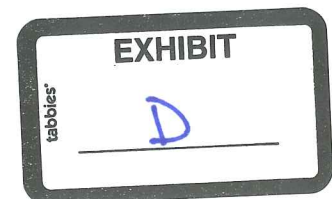
**AFFIDAVIT OF
BROOKE B. MURPHY**

STATE OF MONTANA

County of Yellowstone

Affiant Brooke B. Murphy, of lawful age and, upon her oath, deposes
and says:

1. I am an attorney licensed to practice in the State of Montana
and employed by Matovich, Keller & Murphy, P.C., and representing



Liberty Mutual Fire Insurance Company (hereinafter "Liberty Mutual") in the above captioned matter.

2. On October 2, 2012, Plaintiff's counsel Matthew Gallinger requested an extension until October 8, 2012 to serve Plaintiff's discovery responses. *See* Gallinger email to Murphy (October 2, 2012), attached hereto as **Exhibit 1**.

3. I sent Mr. Gallinger a follow-up email confirming that Plaintiff had until October 8, 2012 to serve discovery responses. *See* Murphy email to Gallinger (October 2, 2012), attached hereto as **Exhibit 2**.

4. On October 5, 2012, Mr. Gallinger sent me an email requesting until October 23, 2012 to answer discovery. *See* Gallinger email to Murphy (October 5, 2012), attached hereto as **Exhibit 3**.

5. I sent Mr. Gallinger a follow-up email confirming that this would be acceptable and requesting that we schedule Plaintiff's deposition for the week of November 5, 2012. *See* Murphy email to Gallinger (October 5, 2012), attached hereto as **Exhibit 4**.

6. Plaintiff's deposition was scheduled for November 7, 2012.

7. On October 23, 2012, I emailed Plaintiff's counsel Rodney Hartman to inquire whether he would serve Plaintiff's discovery responses by the end of the week, in light of the November 7, 2012 deposition date.

See Murphy email to Hartman (October 23, 2012), attached hereto as

Exhibit 5.

8. The next time I heard from Mr. Hartman was on October 29, 2012. Mr. Hartman left me a voice mail advising that Plaintiff would not be serving discovery responses until November 5th or 6th.

9. I sent Mr. Hartman an email advising that this would not be acceptable in light of Plaintiff's November 7, 2012 deposition. I advised that we needed Plaintiff's discovery responses by "Friday, November 2, at the very latest", and if that was not possible, then we would have to reschedule his deposition. See Murphy email to Hartman (October 29, 2012), attached hereto as **Exhibit 6.**

10. On October 30, 2012, Mr. Gallinger advised me that it might not be possible for them to serve Plaintiff's discovery responses by Friday, November 2, 2012. He requested that I provide him with additional dates in case we had to reschedule Plaintiff's deposition. See Gallinger email to Murphy (October 30, 2012), attached hereto as **Exhibit 7.**

11. I advised Mr. Gallinger that we would have to reschedule Plaintiff's deposition if they could not provide discovery responses by November 2, 2012. I suggested rescheduling Plaintiff's deposition for November 20, 2012. I also stated that we would have no choice but to file a

motion to compel if Plaintiff did not serve discovery responses by November 6, 2012. *See* Murphy email to Gallinger (October 30, 2012), attached hereto as **Exhibit 8**.

12. On November 1, 2012, Mr. Gallinger advised me that Plaintiff would be available for a deposition on November 20, 2012. *See* Gallinger email to Murphy (November 1, 2012), attached hereto as **Exhibit 9**.

13. Plaintiff's November 7, 2012 deposition was cancelled and rescheduled for November 20, 2012. *See* Toone emails to Murphy and Huso (November 1, 2012), attached hereto as **Exhibit 10**.

14. I have not heard from Plaintiff's counsel since I received Mr. Gallinger's email on November 1, 2012.

15. On November 12, 2012, I advised Mr. Gallinger and Mr. Hartman that Liberty Mutual would be filing a motion to compel. *See* Murphy email to Gallinger and Hartman (November 12, 2012), attached hereto as **Exhibit 11**.

16. I have heard nothing since that time and am now left with the prospect of once again cancelling Plaintiff's deposition, which is set for November 20, 2012.

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FURTHER AFFIANT SAYETH NAUGHT

DATED this 13th day of November, 2012.

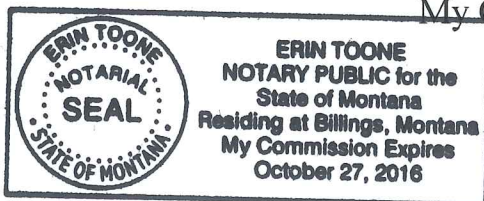
Brooke B. Murphy
BROOKE B. MURPHY

STATE OF MONTANA)
 :
County of Yellowstone)

On this 13th day of November, 2012, before me, the undersigned, a
Notary Public for the State of Montana, personally appeared Brooke B.
Murphy, known to me to be the person whose name is subscribed to the
within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my Notarial Seal the day and year in this certificate first above written.

NOTARIAL
SEAL



Erin Toone
NOTARY PUBLIC FOR THE STATE OF _____
Printed Name: Erin Toone
Residing at: Billings, MT
My Commission expires: 10/27/2016
mm/dd/yyyy

Erin Toone

From: Matthew Gallinger [mailto:Matt@tolliverlaw.com]
Sent: Tuesday, October 02, 2012 9:13 AM
To: Brooke Murphy
Cc: Katie Huso; Rod Hartman
Subject: Discovery

Dear Brooke:

It was a pleasure speaking with you today. You have given us an extension until October 8, 2012 to answer our discovery.

I will be in touch.

Sincerely Yours,

Matt Gallinger

Matthew Gallinger

mgallinger@tolliverlaw.com

Tolliver Law Firm, P.C.

PO Box 1913

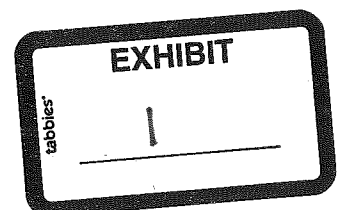
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Phone: 406-256-9600

Fax: 406-256-0781

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11/12/2012



Erin Toone

From: Brooke Murphy
Sent: Tuesday, October 02, 2012 9:16 AM
To: Matthew Gallinger
Cc: Katie Huso; Rod Hartman; Ashley Frank; 'Erin'
Subject: RE: Discovery
Matt:

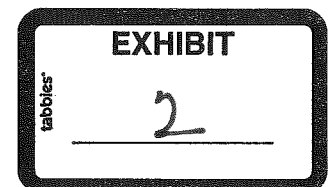
This will confirm that you have until October 8, 2012 to answer discovery.

As we discussed, we look forward to scheduling your client's deposition as soon as reasonably possible after we have had a chance to review your responses, perhaps yet this month.

It was a pleasure.

Brooke B. Murphy
Matovich, Keller & Murphy P.C.
(406)252-5500

11/12/2012



From: Matthew Gallinger [mailto:Matt@tolliverlaw.com]
Sent: Friday, October 05, 2012 9:18 AM
To: Brooke Murphy
Subject: RE: Discovery

Dear Brook:

Rod is still in the hospital. It looks like he got a bad case of the flu. He will not be released until Monday, and I do not know when he will be back to work but probably sometime late next week. I am currently working on the discovery responses but I taking over for Rod for a trial at the end of the month and I have a supreme court brief due the end of next week. I was wondering if I could get an extension on the discovery responses until October 23, 2012 along with the response to the motion for a protective order. If this is unacceptable please let me know.

Sincerely Yours,

Matt Gallinger

Matthew Gallinger

mgallinger@tolliverlaw.com

Tolliver Law Firm, P.C.

PO Box 1913

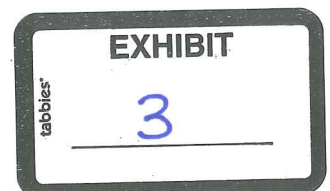
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Erin Toone

Case 1:12-cv-00056-RWA Document 16-4 Filed 11/13/12 Page 9 of 16

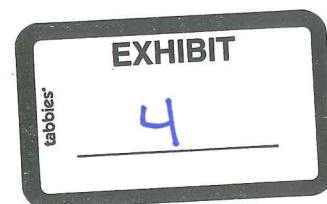
From: Brooke Murphy
Sent: Friday, October 05, 2012 9:47 AM
To: Matthew Gallinger
Cc: Katie Huso; Ashley Frank; 'Erin'
Subject: RE: Discovery

Matt:

That would be fine under the circumstances. Please give Rod my best, that sounds like a nasty flu. Can we get a deposition date for the week of November 5?

Brooke B. Murphy
Matovich, Keller & Murphy P.C.
(406)252-5500

11/12/2012



Erin Toone

Case 1:12-cv-00056-RWA Document 16-4 Filed 11/13/12 Page 10 of 16

From: Brooke Murphy
Sent: Tuesday, October 23, 2012 5:01 PM
To: Rod Hartman
Cc: Ashley Frank; 'Erin'; Katie Huso
Subject: RE: Duecker v. Liberty Mutual Fire Insurance Company CV-12-56

Rod:

Thank you. I am sorry you have been in the hospital but glad to hear you are back at work (and hopefully feeling better).

Your client's deposition is currently scheduled for November 7. I have no problem with you taking a few more days to get me discovery. Will that be possible by the end of the week?

Brooke B. Murphy
Matovich, Keller & Murphy P.C.
(406)252-5500

11/12/2012



Erin Toone

From: Brooke Murphy
Sent: Monday, October 29, 2012 10:47 AM
To: Matthew Gallinger; Rod Hartman
Cc: Ashley Frank; 'Erin'; Katie Huso
Subject: Duecker

Matt and Rod:

I just received Rod's voicemail regarding discovery in this matter. He advises that now you won't have discovery to us until Monday the 5th or Tuesday the 6th, which would be the day before your client's deposition. That is not acceptable. I require the responses by Friday, November 2, at the very latest. I realize that Rod has been ill, but believe we have been more than patient in waiting for these responses. If it is not possible for you to have the responses to us by Friday, November 2, we will once again need to cancel and reschedule your client's deposition. I would like to avoid doing that if at all possible.

Please provide assurances that I will have the responses by the end of the week.

Thanks.

Brooke B. Murphy
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Fax: (406)252-4613
Web: mkfirm.com

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11/12/2012



Erin Toone

Case 1:12-cv-00056-RWA Document 16-4 Filed 11/13/12 Page 12 of 16

From: Matthew Gallinger [mailto:Matt@tolliverlaw.com]**Sent:** Tuesday, October 30, 2012 1:23 PM**To:** Brooke Murphy**Subject:** RE: Duecker

Dear Brooke:

I am going to be out of the office today and was gone last week. I will be in all day tomorrow and I will find out what is going on. I believe Rod is in trial. If we cannot get you our discovery responses by Friday I will let you know tomorrow. Please give me some dates in case I have to reschedule our client's deposition. I apologize for the confusion.

Sincerely Yours,

Matt

Matthew Gallingermgallinger@tolliverlaw.com

Tolliver Law Firm, P.C.

PO Box 1913

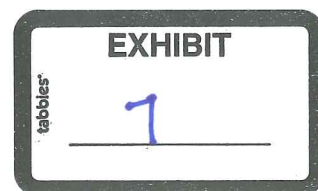
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11/13/2012



Erin Toone

Case 1:12-cv-00056-RWA Document 16-4 Filed 11/13/12 Page 13 of 16

From: Brooke Murphy
Sent: Tuesday, October 30, 2012 1:33 PM
To: Matthew Gallinger
Cc: Katie Huso; Ashley Frank; Erin Toone
Subject: RE: Duecker

Matt:

I am more than a little frustrated with our inability to get your client's deposition taken due to late discovery (this is the second time we have had to reschedule). I understand that Rod has been sick, but would still like to take your client's deposition as soon as possible so that we can move this case towards mediation.

It does not sound like I will have the discovery before Friday. If that is the case, then let's go ahead and reschedule Mr. Duecker's deposition for November 20. That is the first day I have available in the next two weeks. I would still like your client's discovery by November 6 at the latest, as Rod indicated in his voice mail. If I do not have complete discovery by the end of the day on Tuesday, November 6, I will be left with no choice but to file a Motion to Compel.

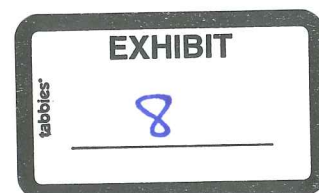
Please let me know if that date works. If it does, let's lock it down and see if we can get a mediation scheduled, as we discussed earlier, sometime in December or January.

Expert disclosures are due on January 11. I assume you will be cooperative in granting us an extension for that deadline, since we served discovery in July and have yet to receive your client's responses to the same.

Thanks. Please let me know.

Brooke B. Murphy
Matovich, Keller & Murphy P.C.
(406)252-5500

11/12/2012



From: Matthew Gallinger [mailto:Matt@tolliverlaw.com]
Sent: Thursday, November 01, 2012 10:57 AM
To: Brooke Murphy
Subject: RE: Duecker

Brooke:

Still waiting to hear from Kevin. I will try again later today. Of course I will work with you on experts. Once I hear from Kevin I will be in touch.

If you have any questions, please contact me.

Sincerely Yours,

Matt

Matthew Gallinger

mgallinger@tolliverlaw.com

Tolliver Law Firm, P.C.

PO Box 1913

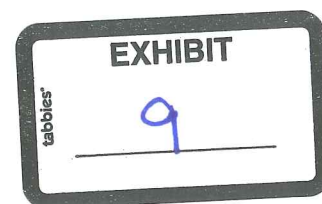
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Katie Huso

From: Brooke Murphy
Sent: Thursday, November 01, 2012 3:12 PM
To: Matthew Gallinger
Cc: Katie Huso; Ashley Frank; 'Erin'
Subject: RE: Duecker

Thanks Matt.

We will cancel the deposition on Wednesday.

Brooke B. Murphy
Matovich, Keller & Murphy P.C.
(406)252-5500



Erin Toone

From: Brooke Murphy
Sent: Monday, November 12, 2012 9:48 AM
To: Matthew Gallinger; Rod Hartman
Cc: Katie Huso; Ashley Frank; 'Erin'
Subject: Duecker Discovery

Matt and Rod:

We are filing a Motion to Compel your client's responses today. We will seek our costs in filing this motion.

Brooke B. Murphy
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2812 First Ave. North
Suite 225
Billings, Montana 59101
Phone: (406)252-5500
Fax: (406)252-4613
Web: mkfirm.com

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